
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Ingstad Brothers Broadcasting, LLC)	EB-04-PL-068
)	
Station KCHK)	NAL/Acct. No. 200532420001
New Prague, MN)	
)	FRN 0010170587

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: June 1, 2005

By the Resident Agent, St. Paul Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Ingstad Brothers Broadcasting, LLC ("Ingstad"), licensee of AM station KCHK in New Prague, Minnesota, apparently willfully and repeatedly violated Section 73.1560(a) of the Commission's Rules ("Rules")¹ by failing to maintain the antenna input power of an AM station as near as is practical to the authorized antenna input power. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),² that Ingstad is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000).

II. BACKGROUND

2. In response to a complaint, on December 1, 3, 4 and 6, 2004, an agent from the Commission's St. Paul, Minnesota Field Office monitored AM station KCHK in New Prague, Minnesota. The agent took field strength measurements during the afternoon and evening and determined that the station switched from daytime power to nighttime power at 6:56 PM CST on December 1, 3, 4, and 6, 2004. The station's authorization requires that the station switch to its nighttime power at local sunset time, which the station authorization specifies is 4:30 PM CST during the month of December.

3. On December 8, 2004, the agent inspected the station and spoke to the General Manager. The General Manager stated that the transmitter was controlled by an automated system and that he did not know what time the station was reducing its power to the authorized nighttime level.

III. DISCUSSION

4. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.³ The term "repeated" means the

¹47 C.F.R. § 73.1560(a).

²47 U.S.C. § 503(b).

³Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed
(continued....)

commission or omission of such act more than once or for more than one day.⁴

5. Section 73.1560(a) of the Rules requires broadcast stations to maintain the antenna input power of an AM station as near as is practical to the authorized antenna input power and not less than 90% nor more than 105% of the authorized power. Field strength measurements taken in the vicinity of station KCHK indicated that the station continued to operate at the daytime power level until 6:56 PM CST on December 1, 3, 4, and 6, 2004, more than two hours after the station was required to change to its nighttime power level. Moreover, during the station inspection on December 8, 2004, the General Manager stated that he did not know what time the station's automated system changed to the nighttime power level. Based on this evidence, we find that Ingstad apparently willfully and repeatedly violated Section 73.1560(a) of the Rules by failing to maintain the antenna input power at the authorized level.

6. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement"), and Section 1.80 of the Rules, the base forfeiture amount for exceeding power limits is \$4,000.⁵ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.⁶ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors, a \$4,000 forfeiture is warranted.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Ingstad Brothers Broadcasting, LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of four thousand dollars (\$4,000) for violations of Section 73.1560(a) of the Rules.⁷

9. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules, within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture, Ingstad Brothers Broadcasting, LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight

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under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁵12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

⁶47 U.S.C. § 503(b)(2)(D).

⁷47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80, 73.1560(a)

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mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

10. The response, if any, must be mailed to Federal Communications Commission, St. Paul Office, P.O. Box 17860, St. Paul, MN 55117 within thirty (30) days from the release date of this Notice of Apparent Liability for Forfeiture and must include the NAL/Acct. No. referenced in the caption.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

13. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Ingstad Brothers Broadcasting, LLC at its address of record. Additionally, a copy is being mailed to the local station address, KCHK-KRDS-KYMN, PO Box 251, 25821 Langford Avenue, New Prague, MN 56071.

FEDERAL COMMUNICATIONS COMMISSION

Albert S. Jarratt, Jr.
Resident Agent
St. Paul Office
Northeast Region
Enforcement Bureau

⁸See 47 C.F.R. § 1.1914.